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| EXAMINER |
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EDWARDS, BRETT J

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| ART UNIT | PAPER NUMBER |
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3781

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09/15/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/587,503 | Applicant(s) RASANEN ET AL. | |
| | Examiner Brett Edwards | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/14/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/2010 has been entered.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 1-3, 6, 9, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wommelsdorf (US 3144971) in view of Schmidt (US 4280652), both of record.

As to claim 1, Wommelsdorf discloses a cup package made of a fiber-based material and comprising a cup for a product to be packaged, wherein the cup is provided with a mouth roll (6) is provided at the mouth of the cup, the mouth roll extending radially outwards and acting as a grip base (Fig. 1; Col. 4, ll. 10-23). Having the mouth rolls extend radially outwards allows for the cups to have a smooth conical shape which allows for nestable stacking (Col. 4, ll. 22-36).

Wommelsdorf does not expressly disclose a lid for closing the mouth of the cup.

However, Schmidt discloses a lid (2) for closing the mouth of a cup (1), wherein the cup package can be opened by lifting the lid off and closed by pressing the lid back, the lid is in partially nested relationship with the cup, attachment of the lid being based on friction and compression between the inner surface of the cup and the lid, and in that a mouth roll (14) is provided at the edge of the lid, the mouth roll acting as grip base when the lid is opened (Fig. 1-8; Col. 1, ll. 25-30; Col. 2, ll. 23-34; Col. 3, ll. 17-20). Schmidt discloses the outer diameter of the lid is greater than the inner diameter of the container, thus creating an interference fit based on compression and friction (Col. 2, ll. 27-34). It is well known in the art that lids help prevent spillage of contents of cups by closing off the opening of the cup.

Schmidt does not expressly disclose the mouth rolls extend radially outward. However, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the mouth roll taught by Schmidt to extend radially outward, as taught by Wommelsdorf, in order to obtain a conical shape which allows for nestable stacking of the lids.

At the time of invention it would have been obvious to one of ordinary skill in the art to modify the cup package taught by Wommelsdorf to include the lid taught by modified Schmidt in order to prevent spillage of contents of the cup by closing off the opening of the cup.

As to claim 2, Wommelsdorf and Schmidt disclose a cup package as defined in claim 1. Wommelsdorf further discloses that a mantle (1) of the cup expands conically upwards (Fig. 1; Col. 3, ll. 43-45). Schmidt further discloses that a mantle (7) of the lid expands conically upwards (Fig. 2; Col. 2, ll. 41-43)

Neither expressly discloses the conical surfaces as lying opposite and being attached to each other. However, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the lid taught by Schmidt so as to have the conical surface of the lid match that of the cup, and thus have the conical surfaces lie oppose and be attached to each other, in order to provide a better seal between the cup and the lid and thus further help prevent spillage of the contents of the cup package.

As to claim 3, Wommelsdorf and Schmidt disclose a cup package as defined in claims 1 or 2, wherein friction and/or compression between the inner surface of the cup and the lid retains the lid in position (Schmidt, Col. 2, ll. 27-34).

As to claim 6, Wommelsdorf and Schmidt disclose a cup package as defined in claim 1. Schmidt further discloses that the lid has been formed by connecting a principally discoid centre (3) and a surrounding frame (7) bearing against the inner surface of the cup, the frame having a mouth roll (14) at its edge (Fig. 6; Col. 3, ll. 17-20).

As to claim 9, Wommelsdorf and Schmidt disclose a cup package as defined in claim 1. Wommelsdorf further discloses the cup is made of polymer-coated (5) board (4), with the polymer coating provided at least on the inner

Art Unit: 3781

surfaces of the cup (Fig 1A; Col. 4, ll. 12-14; Col. 5, ll. 9-16). Schmidt further discloses an outer surface of the lid is covered by a polymer coating but does not expressly disclose the inner surface is provided with a polymer coating (Col. 3, ll. 37-38).

However, Wommelsdorf discloses the polymer coating is insoluble in water and therefore helps to seal and protect the underlying board (Col. 1, ll. 62-70; Col. 5, line 20 - Col. 6, line 2).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the lid taught by Schmidt in the cup pack taught by Wommelsdorf and Schmidt so as to provide the inner surface of the lid with a polymer coating, as taught by Wommelsdorf, in order to seal and protect the board material of the lid.

As to claim 10, Wommelsdorf and Schmidt disclose the cup page of claim 1. Wommelsdorf further discloses a method for manufacturing the cup as defined in claim 1, wherein a cup is formed by connecting a principally discoid bottom (2) with a mantle (1) forming the sides of the cup and by equipping the mouth of the cup with a surrounding mouth roll (6), the mouth roll serving as a grip base (Fig. 1-3; Col. 4, ll. 10-23).

Schmidt further discloses that the lid is formed for closing the mouth of the cup by connecting a principally discoid centre (3) with a sleeve-like frame (7) partially nested in the cup mantle and by equipping the edge of the frame with a surrounding mouth roll (14) (Fig. 1-8; Col. 2, ll. 41-67; Col. 3, ll. 14-20).

While neither expressly discloses the cup and the lid are substantially manufactured by mutually corresponding operations, it would have been obvious to one of ordinary skill in the art to use substantially mutually corresponding operations to manufacture the cup and lid in order to reduce manufacturing costs of the cup package.

As to claim 14, Wommelsdorf and Schmidt disclose a cup package as defined in claim 1. Wommelsdorf further discloses that the cup package comprises a lowermost cup and an upper cup in partially nested relationship with the lowermost cup, each of the cups having a mouth roll with vertically adjacent mouth rolls (6) acting as grip bases when the parts are separated (Fig. 2; Col. 4, ll. 24-25). Therefore, the cup package taught by Wommelsdorf and Schmidt has at least three parts, comprising a lowermost cup, an upper cup in partially nested relationship with the lowermost cup and an uppermost lid, each of said parts comprising a mouth roll with vertically adjacent mouth rolls acting as grip bases when the parts are separated.

4. Claims 4, 5, 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wommelsdorf and Schmidt as applied to claims 1, 2 and 10 above, and further in view of Wanderer (US 3349941), of record.

As to claim 4, Wommelsdorf and Schmidt disclose the cup package as defined in claims 1 and 2. Neither expressly discloses at least one of the

Art Unit: 3781

opposite surfaces of the cup and the lid comprises one or more protrusions in order to provide attachment between the surfaces.

However, Wanderer discloses a cup package, comprising a cup (14) and a lid (16), each of said parts comprising a mouth roll (26, 48, 88) with vertically adjacent mouth rolls acting as grip bases when the parts are separated, wherein the cup is provided with a protrusion (68, 70, 72) and a recess (the inside portion of 76, 78 and 80) and the lid is provided with a protrusion (82, 98, 100) corresponding to the recess in the lid (Fig. 1-3; Col. 2, ll. 24-27 and 46-52; Col. 3, ll. 33-38 and line 72 - Col. 4, line 68). Wanderer discloses the protrusions and recesses act as locking members and thus help prevent unintentional removal of the lid from the cup (Col. 4, ll. 34-46).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the cup package taught by Wommelsdorf and Schmidt to include the recesses and protrusions taught by Wanderer in order to prevent unintentional removal of the lid from the cup.

As to claim 5, Wommelsdorf, Schmidt and Wanderer disclose a cup package as defined in claim 4, wherein one of the opposite surfaces of the cup and the lid comprises one or more protrusions, the other one comprising one or more recesses for receiving the protrusion in order to provide attachment between the surfaces (Wanderer, Fig. 1-3; Col. 2, ll. 24-27 and 46-52; Col. 3, ll. 33-38 and line 72 - Col. 4, line 68).

As to claim 7, Wommelsdorf and Schmidt disclose all of the limitations of the claim except for the smaller-sized cup with a mouth roll.

However, Wanderer discloses a package which has at least three parts, comprising a lowermost larger-sized cup (12), a smaller-sized cup (14) in partially nested relationship with the larger cup and an uppermost lid (16), each of said parts comprising a mouth roll (26, 48, 88) with vertically adjacent mouth rolls acting as grip bases when the parts are separated (Fig. 1 and 3; Col. 2, II. 24-27 and 46-52; Col. 3, II. 33-38; Col. 4, II. 62-68). Wanderer discloses the two cups allows for the packaging of different foodstuffs or other products within in the same container but in different compartments (Col. 1, II. 9-14).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the cup package taught by Wommelsdorf and Schmidt to include a smaller sized cup, as taught by Wanderer in order to allow for the packaging of different foodstuffs within the same cup package.

In regard to claim 8, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). As such, the cup package taught by Wommelsdorf, Schmidt and Wanderer as defined by claim 7 is capable of being a food package, in which the larger-sized cup contains the main product and the smaller-sized cup contains trimmings.

As to claim 12, Wommelsdorf and Schmidt disclose the method as defined in claim 10. Neither expressly discloses that an at least three-part product package is manufactured by forming at least two partially nested cups (1, 10) and a lid (2) closing the mouth of the uppermost cup (10) and by packaging products (5, 14) into the cups in mutually different quantities and/or qualities.

However, Wanderer discloses a package has at least three parts, comprising two partially nested cups (12, 14) and an uppermost lid (16), each of said parts comprising a mouth roll (26, 48, 88) with vertically adjacent mouth rolls acting as grip bases when the parts are separated (Fig. 1 and 3; Col. 2, II. 24-27 and 46-52; Col. 3, II. 33-38; Col. 4, II. 62-68). Wanderer discloses the two cups allows for the packaging of different foodstuffs or other products within in the same container but in different compartments (Col. 1, II. 9-14).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the method taught by Wommelsdorf and Schmidt to include two partially nested cups with different products in each, as taught by Wanderer, in order to allow for the packaging of different foodstuffs within the same container.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wommelsdorf and Schmidt, as applied to claim 10 above, and in further view of Bacon (US 5431619), of record.

As to claim 11, Wommelsdorf and Schmidt disclose a method as defined in claim 10. Neither discloses the mouth rolls are formed in the cup and the lid by mechanical molding of a fiber-based packaging material. Instead, both are silent as to the particular way the mouth rolls are formed.

However, the use of mechanical molding to accurately form mouth rolls at a low production cost is very well known in the fiber-based cup art, as is evidenced by Bacon (Fig. 2, 6-8; Col. 4, ll. 2-4; Col. 6, ll. 61-Col. 7, line 33).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the method of manufacturing the cup package taught by Wommelsdorf and Schmidt so as to form the mouth rolls by mechanical molding of the fiber-based packaging material, as taught by Bacon, in order to achieve accurate products with low manufacturing costs.

Response to Arguments

6. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett Edwards whose telephone number is (571)270-1443. The examiner can normally be reached on M-F 9:30 AM - 6 PM EST.

Art Unit: 3781

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. E./
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781